

DEPARTMENT OF HOMELAND SECURITY

Environmental Planning Program

AGENCY: Department of the Homeland Security

ACTION: Notice of proposed directive; request for comments.

SUMMARY: The purpose of this notice is to provide an opportunity for public comment on the Department of Homeland Security draft directive containing policy and procedures for implementing the National Environmental Policy Act of 1969 (NEPA), as amended, Executive Order 11514, as amended, Executive Order 12114, and Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508). Pursuant to CEQ regulations, the DHS is soliciting comments on its proposed internal management directive from members of the interested public.

DATE: Comments and related material must be received by [insert 30 days from publication].

ADDRESSES: Please submit your comments by only one of the following means:

(1) By mail to: Environmental Planning, Office of Safety and Environment, Management Directorate, Department of Homeland Security, Washington, D.C. 20528

(2) By hand delivery to: Environmental Planning, Office of Safety and Environment, Management Directorate, Department of Homeland Security, Anacostia Naval Annex., Building 410, 245 Murray Lane, S.W, Washington, D.C. 20528

(3) By Fax to: (202) 772-9749

In choosing among these means, please give due regard to the difficulties and delays associated with delivery of mail through the U.S. Postal Service.

FOR FURTHER INFORMATION CONTACT: Mr. David Reese, Office of Safety and Environment, Department of Homeland Security, 202.692.4224. e-mail: ADMIN-S&E@hq.dhs.gov.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of Homeland Security encourages interested persons to submit written data, views, or comments. Persons submitting comments should please include their name, address, and other appropriate contact information. You may submit your comments and material by one of the means listed under ADDRESSES. If you submit them by mail or hand delivery, submit them in an unbound

format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they were received, please enclose a stamped, self-addressed postcard or envelope. The DHS will consider all comments received during the comment period.

Background.

This directive establishes policy and procedures to ensure the integration of environmental considerations into the unique mission of the Department of Homeland Security (DHS). It outlines roles and responsibilities for compliance with NEPA, as well as other laws and requirements for stewardship of the environment. This directive establishes a framework for the balanced and systematic consideration of environmental stewardship in the planning and execution of DHS activities.

DHS is composed of five major directorates and three services: Border and Transportation Security, Emergency Preparedness and Response, Science and Technology, Information Analysis and Infrastructure Protection, Management, and Bureau of Citizenship and Immigration Services, U.S. Coast Guard, and Secret Service. This organization resulted from a total of 22 Federal agencies that were brought together in March of 2003 and organized to form the new Department. DHS has the mission to lead the unified national effort to secure America. It has the responsibility to prevent and deter terrorist attacks and protect against and respond to threats and hazards to the Nation. As a part of this mission, DHS ensures safe and secure borders, facilitates lawful immigrants and visitors, and promotes the free flow of commerce among nations.

The policies and procedures in the Management Directive place particular emphasis on the requirements of the project proponent to ensure that environmental stewardship requirements are appropriately integrated into the performance of DHS missions. Substantive or procedural requirements in this directive apply to the program planning and project development in all DHS directorates and organization elements. In particular, there is special consideration of the requirements for intergovernmental coordination, public involvement, dispute resolution, handling of sensitive information, and emergency procedures in DHS decision making.

This proposed management directive includes processes for preparing Environmental Assessments, Findings of No Significant Impact, and Environmental Impact Statements. The DHS proposes to use this directive in conjunction with NEPA, the CEQ regulations at 40 CFR parts 1500-1508, and other pertinent environmental regulations, Executive Orders, statutes, and laws developed for the consideration of environmental impacts of Federal actions.

This directive was established by reviewing the actions and existing regulations of all the elements that were integrated into the new department. Under the direction of the Office of Safety and Environment in the Management directorate, a panel of experts in environmental

policy and law were drawn from the elements to prepare the new directive. This panel of experts worked for over 12 months to develop this draft directive.

In preparing this directive, the panel of experts reviewed existing law and requirements, former agency policies, existing guidance on the implementation of NEPA from the Council on Environmental Quality, and the latest studies on the implementation of NEPA. In addition, they examined policies and procedures from other Federal agencies to identify policies that could be appropriate for the missions of the new Department.

An area of emphasis included the development of appropriate categorical exclusions. Since DHS was brought together and organized around a core mission, many of the organizational elements are engaged in similar activities. Nearly all DHS component elements engage at various times in activities related to law enforcement, emergency response and recovery, screening and detection for dangerous or illegal materials or individuals, research and development of new systems or processes related to homeland security, and training exercises, among other things. These activities are performed in various environmental settings, for example both the Transportation Security Administration (TSA) and the Customs and Border Protection (CBP) screen packages for dangerous or illegal materials, but TSA works at airports while CBP works at borders. Many of the new elements of the Department came from agencies that had established categorical exclusions covering all or parts of their activities. These legacy categorical exclusions were evaluated for their broader applicability to similar missions and activities throughout the new Department. Likewise, the panel of experts examined existing categorical exclusions from other Federal departments to determine whether any might be adopted for DHS actions of a similar, nature, scope, and intensity as those performed by other Federal agencies. The resulting list of proposed categorical exclusions in Attachment A of the Management Directive includes a large number that are applicable to all component elements of the DHS.

In addition, the panel reviewed the history of environmental assessments and environmental impact statements and the administrative history of the legacy categorical exclusions in developing proposed categorical exclusions in Attachment A of the Management Directive. The resultant list of proposed categorical exclusions contains several that are specific to certain organizational elements of DHS. It is also important to note that the directive maintains those categorical exclusions previously established by both the Coast Guard and the Federal Emergency Management Agency.

A copy of this Federal Register publication, as well as a summary of the administrative record for the list of categorical exclusions is available internet at www.dhs.gov/dhspublic/interapp/editorial/editorial_0468.xml.

The Department of Homeland Security solicits public review of this document and will review and consider those comments before this directive is final.

Tom Ridge
Secretary

MANAGEMENT DIRECTIVE 5100.1, ENVIRONMENTAL PLANNING PROGRAM

1. Purpose

A. This directive establishes policy and procedures to ensure the integration of environmental considerations into Department of Homeland Security (DHS) mission planning and project decision making. Environmental stewardship, homeland security, and economic prosperity are compatible and complementary. This directive establishes a framework for the balanced and systematic consideration of these factors in the planning and execution of DHS activities.

B. In particular, this directive establishes procedures that the DHS will use to comply with The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321-4335) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508). NEPA is the basic charter and foundation for stewardship of environmental resources in the United States. It establishes policy, sets goals, and provides a tool for carrying out federal environmental policy. NEPA requires federal agencies to use all practical means within their authority to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

C. This directive provides the means for the DHS to follow the letter and spirit of NEPA and comply fully with the CEQ regulations. This directive adopts and supplements the CEQ regulations, and is to be used in conjunction with the CEQ regulations. However, this directive encompasses requirements in addition to NEPA and establishes the DHS Environmental Planning Program.

2. Scope

A. Substantive or procedural requirements in this directive apply to all DHS elements and are to be used in all program planning and project development. This Directive applies to any DHS action with the potential to affect the quality of the environment of the United States, its territories, or its possessions. It also addresses those DHS actions having effects outside the United States, its territories, or its possessions under Executive Order 12114, Environmental Effects Abroad. More specifically, this Directive applies to:

1. All areas of the DHS mission and operations planning
2. Promulgation of regulations
3. Acquisitions and procurements

4. Asset management
5. Research and development
6. Grants programs

B. This Directive supplements the regulations for implementing NEPA published by CEQ at 40 CFR Parts 1500 through 1508. In the case of any apparent discrepancies between these procedures and the mandatory provisions of the CEQ regulations, the CEQ regulations will govern.

3. Authorities

This Directive is governed by numerous Public Laws, Regulations, and Executive Orders, such as, but not limited to:

- A. The National Environmental Policy Act (42 USC §4321 et. seq.)
- B. Environmental Quality Improvement Act of 1970, as amended (42 USC §4321-4335)
- C. Marine Mammal Protection Act (16 USC §1361 et. seq.)
- D. The National Historic Preservation Act (16 USC §470 et. seq.)
- E. The Clean Air Act (16 USC §470 et. seq.)
- F. Federal Water Pollution Control Act (33 USC §1251 et. seq.)
- G. The Coastal Zone Management Act (16 USC §1451 et. seq.)
- H. Endangered Species Act (16 USC §1531 et. seq.)
- I. National Marine Sanctuaries Act (16 USC §1431 et. seq.)
- J. CEQ Regulations November 29, 1978 (43 FR 55978) as 40 CFR Parts 1500-1508
- K. Executive Order. 11514, Protection and Enhancement of Environmental Quality, March 5, 1970, 35 FR 4247, as amended by E.O. 11991, May 24, 1977, 42 FR 26967
- L. Executive Order 11988, Floodplain Management, 42 FR 26971
- M. Executive Order 11990, Protection of Wetlands, 42 FR 26961

N. Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957

O. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629

4. Definitions

A. All definitions of words and phrases in 40 CFR Part 1508 apply to this Directive.

B. Additional definitions of words and phrases as used in this Directive are contained in Appendix A.

5. Responsibilities

Responsibility for oversight of the DHS NEPA activities, unless otherwise delegated, is as follows:

A. ***The Secretary of DHS (Secretary)*** recognizes the long term value of incorporating environmental stewardship into the planning and development of all the DHS missions and activities and exercises the ultimate responsibility in the Department to fulfill environmental planning requirements. To this end, the Secretary has delegated specific authority for environmental planning to the DHS Department Environmental Executive, the Chief of Administrative Services, the Director of Office of Safety and Environment, and to other DHS officials as set forth in this Directive. The following objectives are to be used in guiding environmental planning activities in the DHS:

1. Timely and effective support
2. Sustainable capability
3. Consistency with fiscal and other considerations of national policy
4. Full compliance with all appropriate environmental planning laws, Executive Orders, regulations, and other requirements, such as environmental management systems (EMS)

B. The DHS ***Department Environmental Executive (DEE)*** is the DHS Undersecretary for Management and has authority to fulfill the Secretary's objectives by ensuring that the Department fully integrates environmental planning requirements into all the DHS missions and activities. The DEE recognizes that environmental planning is an important and necessary part of good management practice in the Department. To this end, the DEE has delegated specific authority for environmental planning to the Chief of Administrative Services, the Director of the

Office of Safety and Environment, and to other DHS officials as set forth in this Directive. In exercising the authority delegated from the Secretary, the DEE will perform the following roles:

1. Ensure that Under Secretaries and Designated DHS Officials incorporate environmental planning and stewardship requirements into their policies and procedures to fulfill the Secretary's objectives and the requirements of NEPA, the CEQ Regulations, this Directive, applicable Executive Orders, and other environmental planning requirements.
2. Support budget requests to meet the requirements of this Directive.
3. Consult, as needed, with Under Secretaries and Designated DHS Officials to ensure that they complete appropriate environmental planning for highly sensitive programs or actions that may require the attention of either the Deputy Secretary or the Secretary.
4. Delegate requests for environmental planning related information received at the Departmental level to the Chief, Administrative Services for action.

C. The ***Chief of Administrative Services (CAS)*** has authority to support the DEE in its efforts to promote good management practice by ensuring that the Department fully incorporates environmental planning requirements into all of the DHS missions and activities. To this end, the CAS has delegated specific authority for environmental planning to the Director of Office of Safety and Environment and to other DHS officials as set forth in this Directive. In exercising this authority, the CAS will perform the following:

1. Advise the DEE, as needed, on all environmental planning matters in the Department.
2. Establish, as needed, appropriate Department-wide policy, guidance, or training to enable the effective performance of environmental planning throughout the DHS.
3. Recommend, as requested by the DEE, appropriate action on budget requests for environmental planning resources from Under Secretaries and Designated DHS Officials.
4. Consult with Under Secretaries and Designated DHS Officials to ensure that their policies and procedures incorporate the requirements of this Directive.
5. Direct, as needed, the performance of environmental planning activities within the DHS directorates and elements with particular emphasis on highly sensitive programs or actions that may require the attention of the senior executive levels of the Department.

6. Advise the responsible Under Secretary or Designated DHS Official and, if appropriate, the Secretary, of a proposed action believed not to conform with the DHS policies or, after consulting with the General Counsel, applicable environmental laws and regulations.

7. Coordinate requests for environmental planning related information received at the Departmental level among appropriate DHS elements or assign the request to the appropriate element for resolution.

8. Approve new or revised supplementary procedures proposed by the DHS elements for the implementation of this Directive pursuant to the recommendations of the Director, Office of Safety and Environment.

9. Grant a delegation authority to an Under Secretary or a DHS official to sign environmental documents pursuant to the recommendations of the Director, Office of Safety and Environment. Delegations that exist within the DHS at the time this Directive becomes effective (i.e., Coast Guard, Federal Emergency Management Agency, Customs and Border Protection, Immigration and Customs Enforcement, and Citizenship and Immigration Services) will remain in effect until they are updated or revoked.

10. Revoke, as appropriate, a delegation of authority to a DHS Under Secretary or designated official.

D. The ***Director, Office of Safety and Environment (DOSE)*** is designated by the Secretary as the DHS Environmental Planning coordinator and has oversight responsibilities for the management and direction of the Department-wide environmental planning program. The DOSE will support the CAS with advice and assistance in carrying out the responsibilities of that office as set forth in the above paragraph. Such advice and assistance will, at a minimum, consist of the following:

1. Advise the CAS, as needed, on all environmental planning matters in the Department.

2. Develop, as needed, appropriate Department-wide policy, guidance, or training to enable the consistent, timely, and effective performance of environmental planning throughout the Department to fulfill the Secretary's objectives and other requirements of this Directive.

3. Evaluate for CAS, as requested, budget requests for environmental planning resources.

4. Guide programs within the DHS elements to ensure that their policies, procedures, and actions fulfill the Secretary's objectives and the requirements of this Directive.

5. Direct, as needed, the performance of environmental planning activities within the DHS elements, with particular emphasis on headquarters level programs or actions and those that have the interest of the CAS.

6. Coordinate and respond to requests for environmental planning related information received at the Departmental level among appropriate DHS elements or assign the request to the appropriate directorate for resolution.

7. Review environmental documents, public notices, and other related external communications that require a Departmental level approval prior to release by the project proponent. This includes all draft, final, and supplemental Environmental Impact Statements (EIS) originating in the Department prior to filing with EPA, unless otherwise delegated.

8. Evaluate new or revised supplementary procedures for DHS elements for the implementation of this Directive or other environmental planning requirements that are proposed by an Under Secretary or Designated DHS Official under 5.F.8. DHS element supplemental procedures will only be recommended for approval after successfully completing DOSE level review, all necessary CEQ and public review requirements, and incorporating all appropriate comments and revisions.

9. Evaluate requests for delegation of authority from an Under Secretary or a designated DHS Official to sign environmental documents. Such delegation shall only be recommended for approval if the requestor has both approved supplementary procedures and adequate staff resources to fulfill the Secretary's objectives and the requirements of this Directive. The adequacy of staff resources will involve an evaluation of knowledge and experience in fulfilling environmental planning requirements and preparing NEPA analyses and documentation sufficient to meet the Secretary's objectives. Requests for delegation of authority and supplementary procedures may be evaluated concurrently.

10. Recommend revocation of a delegation of authority from an Under Secretary or a designated DHS Official for inappropriate procedures or inadequate staff resources to ensure full compliance with this Directive or other environmental planning requirements.

11. Assist the DHS elements, as needed, in reviewing and assessing the environmental impacts of proposed DHS actions covered by Executive Order (EO) 12114.

12. Discuss with CEQ any DHS requests for alternative arrangements or procedures to comply with NEPA and the CEQ regulations.

13. Review and comment on EISs and NEPA analyses originating from agencies outside of the DHS relating to:

- (a) Actions with national policy implications relating to the DHS missions;
- (b) Legislation, regulations, and program proposals having a potential national impact on a DHS mission, and
- (c) Actions with the potential to encroach upon the DHS missions.

14. Act as the principal point of contact for the DHS on environmental issues of DHS-wide applicability brought before the CEQ, the Office of Management and Budget, the Advisory Council on Historic Preservation, U.S. Environmental Protection Agency headquarters, and other federal agency headquarters.

15. Perform other functions as are specified in this Directive or as are appropriate under NEPA, the CEQ Regulations, applicable Executive Orders, other environmental requirements, or other instructions or recommendations of CEQ or EPA concerning environmental matters.

E. The ***General Counsel and/or Element Chief Counsel*** will:

- 1. Provide legal sufficiency review, when appropriate, for all draft, final, and supplemental Environmental Assessments (EAs), Findings Of No Significant Impact (FONSI)s, Environmental Impact Statements (EISs), and Records Of Decision (RODs).
- 2. Advise proponents, in consultation with the EPC, whether a proposed element action is subject to the procedural requirements of NEPA.
- 3. Advise proponents on compliance with NEPA, the CEQ Regulations, applicable Executive Orders, and other environmental planning requirements.
- 4. Assist in establishing or revising Departmental or elements' NEPA procedures, including appropriate categorical exclusions.

F. All ***Under Secretaries*** and ***Designated DHS Officials*** will:

- 1. Fully integrate the requirements of this Directive into planning for all applicable programs, activities, and operations. Ensure that the planning, development, and execution of all their missions and activities conform to the guidance in this Directive, the requirements of NEPA, the CEQ Regulations, applicable Executive Orders, and other environmental planning requirements.
- 2. Ensure that DHS proponents take the lead in environmental planning efforts and maintain an understanding of the potential environmental impacts of their programs and projects.

3. Plan, program, and budget for the requirements of this Directive and Prepare and submit budget requests for adequate staff and resources to meet the requirements of this Directive.

4. Support outreach processes for environmental planning.

5. Coordinate with other DHS elements on environmental issues that affect them.

6. Prepare and circulate environmental documents for the consideration of others when an action or policy area in question falls under their jurisdiction as required by 40 CFR Part 1506.9.

7. Request the assistance of DOSE in preparing the environmental analysis for any actions covered by E.O. 12114 unless otherwise delegated.

8. Propose to the CAS, for review and approval, any new or substantive revisions to existing supplementary procedures for the implementation of this Directive and other environmental planning requirements that the element deems necessary. All supplementary procedures will be consistent with this Directive and will be developed in accordance with the CEQ Regulations. Procedures revised solely to effect administrative changes or format issues do not need CAS and CEQ approval.

(a) For those Undersecretaries and Designated DHS Officials with delegated authority to sign environmental documents, preparation of handbooks and other technical guidance for element personnel regarding NEPA implementation do not need CAS and CEQ approval.

(b) The DHS elements, listed in paragraph 5.C.8, that have already developed -specific NEPA implementing procedures prior to becoming part of the DHS may continue to use those procedures. All revisions to supplementary procedures must be consistent with this Directive.

9. Send all environmental documents via their respective organizational hierarchy, to the DOSE for review, prior to release to the public, unless otherwise delegated.

10. For the DHS elements not listed in paragraph 5.C.8, Request from the CAS limited or unlimited delegation of authority to sign environmental documents. The request should include documentation demonstrating that the element has adequate staff resources with sufficient knowledge and experience in preparing NEPA analysis and documentation sufficient to ensure full compliance.

11. Ensure that all external communications on environmental planning requirements related to matters with potential for department wide implications are coordinated with the DOSE and provide DOSE with a courtesy copy of all related formal communications. Unless otherwise delegated, ensure that all external communications on matters concerning the DHS compliance with environmental planning requirements that relate to controversial, high-visibility, classified, or sensitive actions are coordinated with the DOSE.

12. Respond to requests for copies of environmental documents and reports or other information in connection with the implementation of NEPA.

13. Designate an appropriate Environmental Planning Coordinator (EPC) and alternate in their respective element as a single point of contact for coordination with DOSE on relevant environmental planning matters.

G. *Environmental Planning Coordinators (EPCs) will:*

1. Act as a single point of contact for DOSE on all environmental planning matters.

2. Inform key officials within their respective element of current developments in environmental policy and programs.

3. Coordinate environmental planning strategies for matters within their respective element's purview.

4. Act to further their respective element's compliance with the requirements of NEPA, the CEQ Regulations, this Directive, applicable Executive Orders, and other environmental requirements.

5. Identify discretionary activities within their respective element and ensure that the requirements of this Directive are fully integrated into those activities.

6. Work with their respective element proponents, as needed, to fulfill the requirements of this Directive and other environmental planning requirements. Consultation with proponents will involve the following objectives, at a minimum:

(a) Ensure that appropriate environmental planning, including the analyses and documentation required by NEPA, is completed before the proponent makes a decision that has adverse environmental effects or limits the choices of alternatives to satisfy an objective, fix a problem, or address a weakness.

(b) Plan, program, and budget to meet the requirements of this Directive.

(c) Support the execution of the requirements of this Directive.

(d) Ensure that their respective DHS proponents are cognizant of the potential environmental impacts of their programs and projects.

(e) Monitor the preparation and review of environmental planning efforts to ensure compliance with all applicable scheduling, scoping, consultation, circulation, and public involvement requirements.

(f) Advocate and develop, as appropriate, agreements with federal, tribal, and state regulatory and/or resource agencies concerning NEPA and other environmental planning requirements.

(g) Coordinate with other DHS elements on environmental issues that affect them.

(h) Coordinate with DOSE in preparing the environmental analysis for any actions covered by E.O. 12114.

7. Propose new categorical exclusions to DOSE.

8. Support outreach processes for environmental planning.

9. In consultation with the DOSE, define appropriate environmental training requirements for personnel within their respective element(s).

H. The ***Project Proponent*** is the project or program manager. The proponent has the immediate authority to decide a course of action or has the authority to recommend a course of action, from among options, to the next higher organization level (e.g. district to region) for approval. He or she has the lead role in the environmental planning process and is responsible for meeting the following objectives, in consultation with the EPC:

1. Ensuring that appropriate environmental planning, including the analyses and/or documentation required by NEPA is completed before a decision is made that limits the choices of alternatives to satisfy an objective, fix a problem, address a weakness, or develop a program.

2. Preparing requests and or securing funding for environmental analysis and documentation in the budget process.

3. Ensuring the quality of the analysis and the documentation produced in the environmental planning process.

4. Ensuring that the project has adequate resources to complete all environmental analyses and documentation.

5. Performing the necessary outreach and communication with appropriate Federal, tribal, state, local, and public interests.

6. Ensuring that the project budget has sufficient resources to meet all mitigation commitments.

7. Seeking technical assistance from the DOSE, as needed, through the appropriate lines of authority to ensure compliance with NEPA.

6. Policy

A. Stewardship of the air, land, water, and cultural resources is compatible with and complementary to the planning and execution of the DHS missions. Environmental planning processes provide a systematic means of evaluating and fulfilling this aspect of DHS responsibility. The DHS will integrate environmental planning and management into homeland security operational planning, program development, and management methodologies consistent with homeland security requirements, fiscal policies, and other considerations of national policy.

B. The DHS proponents will have the lead role in the environmental planning process. The DHS proponents will be cognizant of the impacts of their decisions on cultural resources, soils, forests, rangelands, water and air quality, fish, and wildlife, and other natural resources in the context of terrestrial and aquatic ecosystems. The DHS proponents will employ all practical means consistent with other considerations of national policy to minimize or avoid adverse environmental consequences and attain the goals and objectives stated in section 101 of NEPA.

C. The DHS proponents will provide for adequate staff, funding, and time to perform NEPA analysis for DHS proposed actions, including those for programs, plans, policies, projects, regulations, orders, legislation or applications for permits, grants, licenses, etc. Should mitigation be necessary to reduce the environmental effects of a DHS proposed action, the proponent will be responsible for providing the costs of mitigation or ensuring that the applicant provides for mitigation.

D. The DHS proponents will integrate the NEPA process with other DHS planning and project decision making activities and other environmental review requirements sufficiently early to:

1. Ensure that mission planning, program development, and project decision making reflect the Secretary's objectives and the policies in this Directive, such as stewardship of resources effected by the DHS missions.

2. Ensure that no action moves forward for funding or approval without the systematic and interdisciplinary examination of likely environmental consequences resulting from the proposed action and reasonable alternatives according to the policy and procedures in this Directive.

3. Balance environmental concerns with mission requirements, technical requirements, and economic feasibility in decision making processes to ensure long-term sustainability of the DHS operations.

4. Allow for appropriate communication, cooperation, and collaboration between the DHS, other government entities, the public, and non-governmental entities as an integral part of the NEPA process.

E. The DHS Proponents will emphasize the quality analysis of the potential for environmental effects among alternative courses of action to meet mission needs and the development of strategies to minimize those effects. Documentation required under NEPA will be a summary of the effort to evaluate the environmental effects and the development of the minimization strategies. The depth of analysis and volume of documentation will be proportionate to the nature and scope of the action, and to the complexity and level of anticipated effects on important environmental resources. Documentation is necessary to present results of the analysis, but the objective of NEPA and the DHS NEPA policy is quality analysis to support DHS decisions, not the production of documents.

F. The DHS proponent, in consultation with the EPC, will determine the level of NEPA analysis required for the proposed action. The DHS proponents will complete their NEPA analysis and review for each DHS proposed action before making a final decision on whether to proceed with the proposed action. No action or portion of an action, covered by a ROD or FONSI, will be taken that limits reasonable alternatives, involves a conflict of resource use, or has an adverse environmental effect until the final decision as justified in the ROD or FONSI has been made public. No actions or portions of an action covered by a CE that requires a Record of Environmental Consideration (REC) will be taken until the REC is completed.

G. Laws other than NEPA that require the DHS to obtain or confirm the approval of other federal, tribal, state, or local government agencies before taking actions that are subject to NEPA, will be integrated into the NEPA process at the earliest possible stage and to the fullest extent possible. However, compliance with other environmental laws does not relieve the proponent from preparing environmental impact analyses and processing necessary environmental documents. NEPA compliance is required unless another law, applicable to a specific action or activity, prohibits, conflicts with, or exempts compliance.

7. Procedures

- A. Attachment A contains specific procedures for the application of environmental planning requirements to the DHS consistent with the Secretary's objectives and the policies in this Directive.
- B. A DHS element with delegation under section 5.C.9 may also develop its own supplemental procedures. DHS element-specific procedures will be immediately effective upon approval of CAS and may be disseminated within the DHS element, even before this Directive is revised to include them. A DHS element with approved supplemental procedures may use them in addition to the procedures in this instruction.
- C. The DHS elements with approved supplemental procedures under 5.C.8 may use the categorical exclusions listed in their approved procedures and as indicated in this Directive. DHS elements may not use the categorical exclusions listed in another DHS element's or any other federal agency's specific procedures.
- D. The CAS may revoke all or part of an element delegation and any implementing procedures. No element will be given approval of implementing procedures unless they also have received complete delegation authority.
- E. The DHS elements may prepare handbooks or other technical guidance for their personnel on how to apply these procedures to their programs.
- F. Any questions or concerns regarding this Directive should be addressed to the Director, Office of Safety and Environment.

ATTACHMENT A, TIMELY AND EFFECTIVE ENVIRONMENTAL PLANNING IN THE
DEPARTMENT OF HOMELAND SECURITY

TABLE OF CONTENTS

Introduction.....	3
1.0 General Policies and Provisions.....	3
1.1 Up Front Planning.....	3
Figure 1: The NEPA Decision Making Process.....	5
1.2 Ongoing Administration.....	6
1.3 Follow Through Monitoring and Mitigation (1505.3)	6
1.4 Dispute Resolution.....	7
Figure 2: Dispute Resolution Flowchart.....	8
2.0 Intergovernmental Collaboration and Public Involvement.....	9
2.1 Purpose.....	9
2.2 Scoping (1501.7).....	9
2.3 Coordination with Other Government Agencies.....	9
2.4 Lead Agencies (1501.5).....	10
2.5 Cooperating Agencies (1501.6).....	10
2.6 Public Involvement (1506.6).....	11
2.7 Review of Other Agencies' Analysis and Documents.....	12
3.0 Categorical Exclusions (1507.3(b)(2)(ii))12	
3.1 Purpose.....	12
3.2 Conditions and Extraordinary Circumstances (1508.4).....	12
3.3 List of Categorically Excludable Actions.....	14
Table 1: Categorical Exclusions.....	15
4.0 Environmental Assessments.....	25
4.1 When to Use.....	26
4.2 Actions Normally Requiring an EA or a Programmatic EA (1501.3, 1508.9).....	26
4.3 Decision Document: Finding of No Significant Impact (FONSI) (1508.13).....	27
4.4 Supplemental EAs.....	28

5.0 Environmental Impact Statements (EISs).....	28
5.1 When to Use.....	28
5.2 Actions Normally Requiring an EIS (1501.4), a Programmatic EIS, or a Legislative EIS (1506.8).....	28
5.3 Preparation and Filing (1506.9).....	29
5.4 Combining Documents.....	29
5.5 Supplemental EISs (1502.9).....	29
5.6 Proposals for Legislation (1506.8).....	30
5.7 Decision Document: Record of Decision (ROD) (1505.2).....	30
5.8 Review of Other Agencies' EISs.....	30
 6.0 Special Circumstances.....	 31
6.1 Emergencies (1506.11).....	31
6.2 Classified or Protected Information (1507.3(c)).....	32
6.3 Procedures for Applicants (1501.2, 1506.5).....	33
 Appendix A: Definitions.....	 35

Introduction

This Attachment provides guidance for timely and effective environmental planning and includes supplementary instructions for implementing the NEPA process in the DHS. The numbers in parentheses signify the relevant citation in the CEQ Regulations. The DHS and its elements will use NEPA as a strategic planning tool, not a documentation exercise. The DHS is committed to using all of the tools at its disposal to ensure timely and effective environmental planning and implementation of the NEPA process.

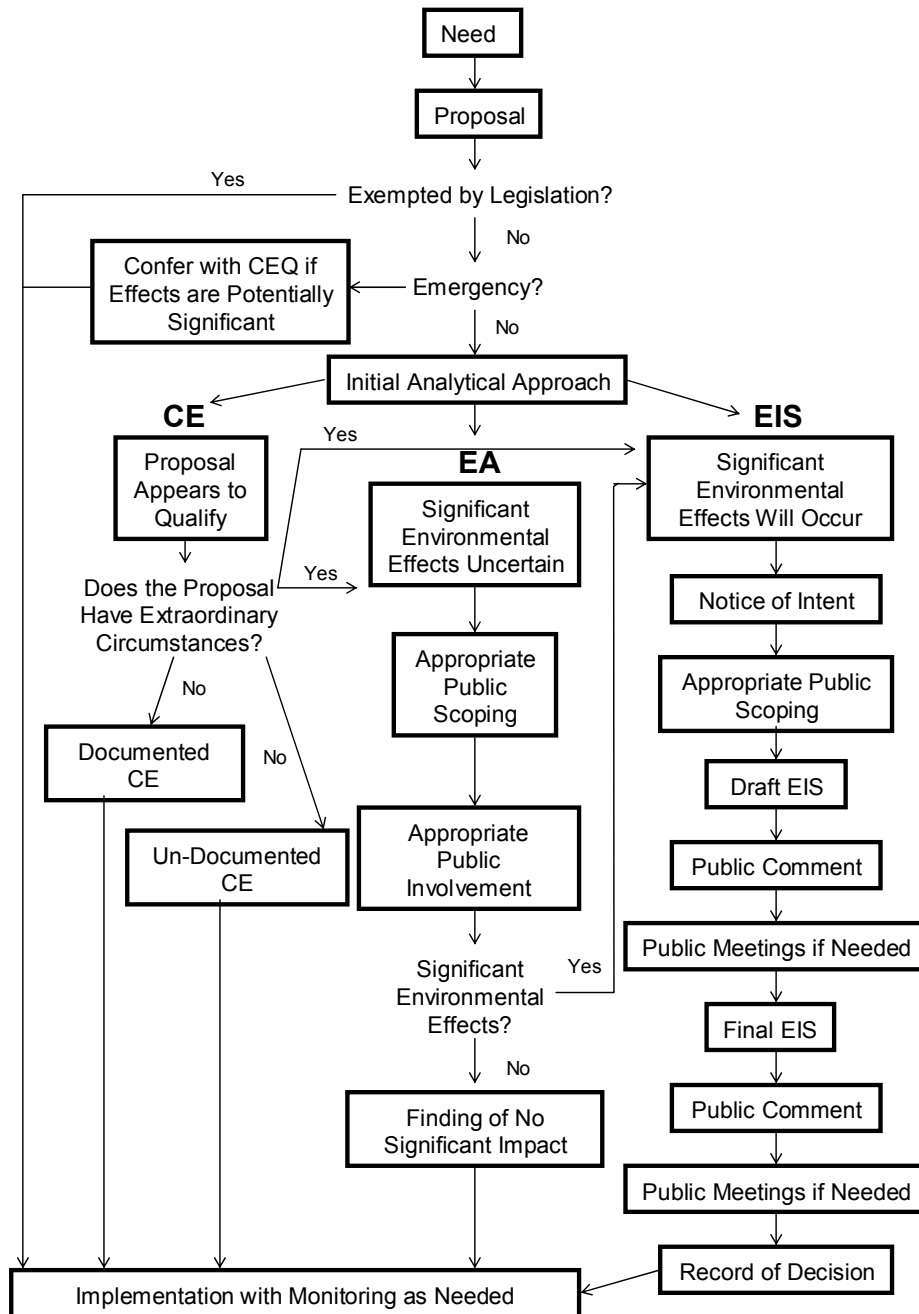
1.0 General Policies and Provisions

Timely and effective environmental planning involves a systematic process to identify and evaluate the potential for significant environmental effects from a proposed DHS action. Proponents of programs and activities within the DHS have a major role in this process. This process and the guidance in this Directive are designed to focus effort on those types of actions with the most potential for significant environmental effects. The process involves three levels of evaluation effort as shown in Figure 1: categorical exclusion; environmental assessment; and environmental impact statement. These levels of effort reflect increasing potential for significant environmental effects. It is expected that the majority of proposed DHS actions will be able to be evaluated through categorical exclusions or environmental assessments. Fewer DHS actions are likely to require an EIS, but those with the greatest potential to impact natural resources and the human environment will likely require an environmental impact statement.

1.1 Up Front Planning Activities

- A. Continually assess environmental planning in the DHS to improve its effectiveness in supporting and enabling departmental missions.
- B. Adapt environmental planning goals and requirements to complement the DHS mission requirements.
- C. Fully integrate NEPA and other environmental planning goals and requirements into internal element program planning and decision making processes and formal direction.
- D. Ensure that environmental planning staffs are located within the DHS organization where they can function as effective members of interdisciplinary planning and project teams.
- E. Enable effective environmental planning through appropriate training, education, and interagency support relationships.

Figure 1: The NEPA Decision Making Process



1.2 Ongoing Administration

- A. Ensure that appropriate environmental planning, including the analyses and documentation required by NEPA, is completed before the proponent makes a decision that limits the choice of alternatives to satisfy an objective, fix a problem, or address a weakness.
- B. Integrate all other environmental and planning reviews concurrently, rather than sequentially, with the NEPA process.
- C. Use the scoping and public involvement processes to limit the analysis of issues to those that are important to the decision making at hand.
- D. Share information with and coordinate with other federal, tribal, state, and local agencies early in the planning process and integrate planning responsibilities with other agencies and governments.
- E. Take into account the views of the surrounding community and other interested members of the public during its planning and decision making process.
- F. Offer cooperating agency status to other federal, tribal, state, and local agencies that have special expertise or jurisdiction by law.
- G. Base all environmental impact analyses, development of monitoring requirements, and mitigation requirements on sound science.
- H. Make maximum use of programmatic analyses and tiering of environmental planning efforts to provide relevant environmental information at the appropriate element decision levels, eliminate repetitive analyses and discussion, ensure proper consideration of cumulative effects, and focus on issues that are important to the decision being made.
- I. Review any relevant planning and decision making documents, whether prepared by the DHS or another agency, to determine if the DHS proposed action or application or any of their alternatives has been considered in a prior NEPA analysis. If so, the DHS will consider adopting the existing analyses, or any pertinent part thereof, in accordance with 40 CFR 1506.3. Adopted environmental impact analyses of others may be revised or supplemented as needed to serve the DHS purposes.
- J. Incorporate material by reference to reduce unnecessary paperwork without impeding public review. The referenced material must be reasonably available for public review within the time allowed for comment.

K. Update the list of categorical exclusions to ensure that the DHS environmental planning resources remain focused on those activities with the most potential for significant effects.

1.3 Follow Through - Monitoring and Mitigation (1505.3)

A. Only those practical mitigation measures that can reasonably be accomplished as part of a proposed alternative will be identified. Any mitigation measures selected by the proponent will be clearly outlined in the NEPA decision document and will be included in the budget of the internal DHS project or made a part of the approved application from external entities.

B. Use best management practices, such as environmental monitoring systems, to implement a project and monitor the predicted environmental effects. Using adaptive management techniques, adapt the implementation of a project as new information becomes available.

C. Budget for mitigation. The proponent will ensure funding to implement mitigation commitments or ensure that external applicants provide for mitigation funding in their proposal prior to approval by the DHS.

D. Implement mitigation. Ensure that all mitigation commitments in the ROD or FONSI are implemented.

E. Monitor Results. Monitoring of the expected environmental effects from DHS projects, including appropriate indicators of effectiveness, is an integral part of any mitigation system. The proponent is responsible for ensuring monitoring during mitigation, where necessary, to ensure that the final decision justified in the ROD or FONSI is implemented. For external applicants, the proponent is responsible for ensuring that the applicant provides for monitoring. The proponent is responsible for responding to inquiries from the public or other agencies regarding the status of mitigation measures adopted in the NEPA process.

1.4 Dispute Resolution

During the NEPA process, a DHS proponent and another federal agency may not agree on significant issues or aspects of the process. When these situations arise, the proponent will provide the other federal agency with written notification, using certified mail or a comparable method, detailing the nature of the disagreement. The proponent will attempt to resolve the dispute within 30 working days of notification, using Alternative Dispute Resolution or a similar mechanism. If dispute negotiations fail, the proponent must notify the other federal agency in writing, with a copy sent to the DHS element HQ, that an agreement is unlikely and the project or operation is jeopardized. From the date of that letter, the DHS element HQ will initiate 30 additional working days of negotiations. If after 30 working days, the DHS element HQ has not resolved the issue, it will be forwarded to the DEE. The DEE may appoint a negotiating team and/or seek Council on Environmental Quality (CEQ) support in informal dispute resolution.

Figure 2 provides a diagram of this process. The DHS elements have the option to use the Institute for Environmental Conflict Resolution, a federally-chartered mediation group based in Tucson, Arizona. In rare instances another agency may independently refer a DHS EIS to CEQ for formal dispute resolution. Upon receipt of advice that another federal agency intends to refer a Departmental matter to CEQ, the DHS lead element will immediately notify and consult with the DOSE.

2.0 Intergovernmental Collaboration and Public Involvement

2.1 Purpose

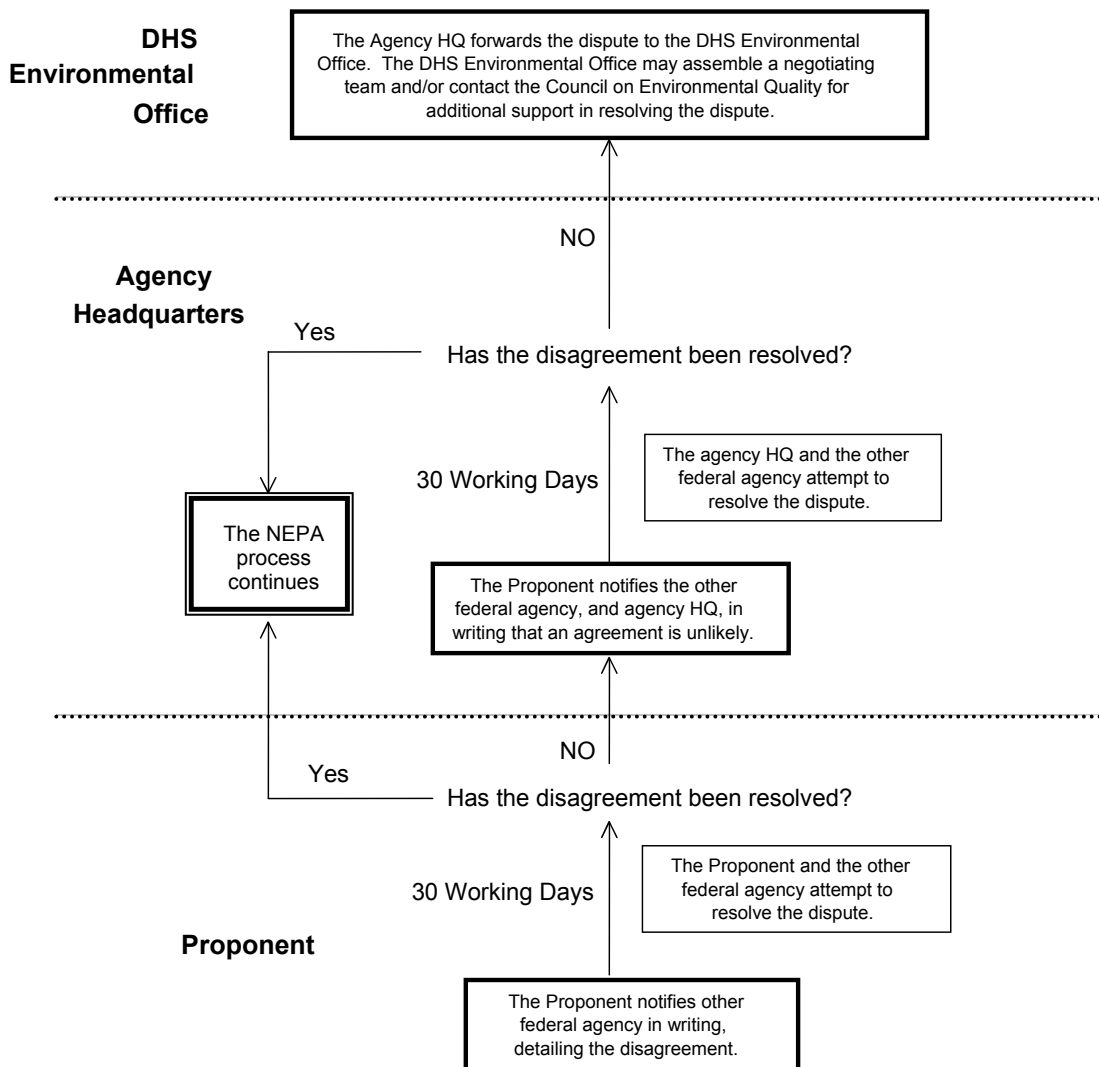
Open communication, consistent with other Federal requirements, is the DHS policy. The purpose of this policy is to build trust between the DHS and the communities it serves. Collaboration with other federal, tribal, state, and local agencies, as well as non-governmental organizations (NGOs) and the general public assists in identifying important issues in the environmental planning process. In many cases, these governments have expertise not available in the DHS or they may have authorities and obligations to protect specific resources.

The appropriate involvement of relevant organizations and citizens early in environmental planning is an effective means to focus environmental planning efforts on issues that are of most interest to the public and importance to the relevant DHS decision. Collaboration, through meaningful and regular dialogue with those outside of the DHS can also serve to avoid conflicts and facilitate resolution when conflicts occur. Other organizations and citizens play an important role in protection of resources and their communities. Awareness and consideration of the needs and requirements of other organizations and the general public, consistent with mission requirements, will enhance the effectiveness of the DHS missions.

2.2 Scoping (1501.7)

- A. Scoping is a process for taking into account the views of the surrounding community and other interested parties during planning and decision making processes. It helps managers set the boundaries of the environmental evaluation and is an effective means to limit the analysis of issues to those that are of interest to the public and/or important to the decision making at hand. Scoping is a process that starts early and continues throughout the planning and early stages of conducting a NEPA analysis.
- B. When the DHS is the lead agency, it is responsible for the scope of the NEPA analysis.
- C. Scoping is required for EISs and strongly encouraged for EAs.

Figure 2: Dispute Resolution Flowchart



2.3 Coordination with Other Government Agencies, States, and Tribes

The DHS policy is to seek out and coordinate with other federal departments and agencies, tribal, state, and local governments, non-governmental organizations, and the general public early in the environmental planning process. In many cases, these organizations have expertise not available in the DHS or they may have authorities and obligations to protect specific resources.

- A. Where an agency has special expertise or jurisdiction by law, the DHS proponent should invite and encourage the federal, state, or tribal governmental agency to be a cooperating agency.
- B. When another agency has expertise to analyze the potential environmental effect of a DHS proposal, the proponent will coordinate early to ensure high quality and complete analysis.
- C. The DHS will coordinate draft environmental impact analyses with appropriate federal, state and tribal governments, as well as other interested parties.
- D. Among the various Federal agencies that can be involved in an environmental planning effort, EPA has a special role. Section 309 of the Clean Air Act provides the Administrator of EPA with authority to review and comment in writing on the environmental impact of any matter relating to the environment contained in any authorized federal projects for construction and any major federal agency action for which NEPA applies. At a minimum, the DHS proponents must ensure that their EISs are appropriately coordinated with the EPA.

2.4 Lead Agencies (1501.5)

The lead agency in an environmental planning process has the responsibility to define the scope and substance of the environmental planning effort.

- A. The DHS will be the lead agency when a proposed action is clearly within the province of the DHS authority. Likewise, an Under Secretary or designated DHS official will seek to form a joint-lead relationship, when another agency has initiated an action within the province of the DHS authority or has a significant responsibility regarding the action.
- B. Unless otherwise delegated, the Department will designate lead elements within the DHS when more than one element could be involved and will represent the Department in consultations with CEQ or other federal entities in the resolution of lead agency determinations.

C. To eliminate duplication with state and local procedures, a non-federal agency may be designated as a joint lead agency when an element has a duty to comply with state or local requirements that are comparable to the NEPA requirements.

2.5 Cooperating Agencies (1501.6)

Other federal, tribal, or state agencies may share a role in the planning and execution of a DHS mission. Likewise, these agencies often have specialized expertise or authorities in environmental planning requirements that can be of benefit to the DHS mission planning.

A. The Department, when requested, will coordinate and assist requests from non-Department agencies in determining cooperating agency status.

B. Any federal, tribal, state, or local government entity with special expertise or jurisdiction may be a cooperating agency by agreement, and elements of the Department are urged to use this process.

2.6 Public Involvement (1506.6)

The DHS believes that public involvement early in the NEPA analysis process will help produce better decisions. The DHS also believes that the public and NGOs play an important role in the protection of resources. The DHS will encourage early and open public involvement in proposals. Open communication with the American public, consistent with other federal requirements, is the DHS policy.

A. **Environmental Assessments.** While the proponent is encouraged to provide public involvement in EAs, the proponent has discretion regarding the type and level of public involvement in EAs (See Section 4.0). The guidance under the following section for EISs may be useful for EAs as well. Factors to be weighed include:

- (1) Magnitude of the proposed project/action and impacts.
- (2) Extent of anticipated public interest, based on experience with similar proposals.
- (3) Urgency of the proposal.
- (4) National security classification.
- (5) The presence of minority or economically-disadvantaged populations that may be impacted.

B. **Environmental Impact Statements.** CEQ regulations mandate specific public involvement steps in the EIS. Elements will:

(1) **Provide for appropriate public involvement.** Public involvement must begin early in the proposal development stage, and during preparation of an EIS. The direct involvement of other agencies and state, local and tribal governments with jurisdiction or special expertise is an integral part of impact analysis, and provides information and conclusions for incorporation into EISs. Information obtained from public involvement efforts can help to focus environmental analysis effort on the impacts with the most potential for significance. A public meeting may be appropriate. The need for a formal public hearing should be determined in accordance with the criteria set forth in 40 CFR Part 1506.6(c).

(2) **Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents.** The notice should be provided by effective and efficient means most likely to inform those persons and agencies that may be interested or affected, including minority populations and low-income populations. Special outreach efforts should be made to identify affected minority populations and low-income populations. Public notices for controversial, high-visibility, classified, or sensitive issues should be cleared with the DEE prior to publication.

(3) **Tailor the methods to reach the audience of concern.** Make every effort to make materials available and accessible to affected or interested populations. Special outreach efforts may be needed to reach affected tribes and minority populations and low-income populations. Translation may be required to reach limited-English speakers. Additionally, elements are encouraged to use electronic means to provide access to and distribution of environmental planning information and NEPA documents.

2.7 Review of Other Agencies' Analysis and Documents

A. The DHS elements should review and comment on other agencies' environmental analysis and documents when requested or when the proposed action may impact the DHS mission, operations, or facilities.

B. Comments should be confined to matters within the jurisdiction or expertise of the Department. However, comments need not be limited to environmental aspects, but may relate to security, immigration, enforcement, and other matters of concern to the Department.

C. If a DHS element intends to issue formal adverse comments on a non-DHS agency's analysis or document, the matter should be coordinated with DOSE prior to issuing the comments.

3.0 Categorical Exclusions (1507.3(b)(2)(ii))

This Chapter establishes the DHS categorical exclusions (CEs) and provides instructions for their implementation.

3.1 Purpose

A. CEQ regulations (1508.4) provide for federal agencies to establish categories of actions that based on experience do not individually or cumulatively have a significant impact on the human environment and, therefore do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). These CEs allow the DHS elements to avoid unnecessary analysis, process, and paperwork and concentrate their resources on those proposed actions having real potential for environmental concerns.

B. An element may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in CEQ regulations (1508.9) even though it is not required to do so.

C. All requests to establish, substantively revise, or delete CEs (along with justification) will be forwarded through the elements to the DOSE for review and comment, unless otherwise delegated. New or substantively modified CEs are subject to CEQ review and public comment before they will be available for use. Securing approval from both the DOSE and CEQ and promulgation remain the responsibility of the DHS element.

3.2 Conditions and Extraordinary Circumstances (1508.4)

For an action to be categorically excluded, the DHS element must satisfy each of the following three conditions. Proponents must involve the EPC in evaluating these conditions. If the proposed action does not meet these conditions or a statute or emergency provision does not exempt it, an EA or an EIS must be prepared before the action may proceed. Where it may not be clear whether a proposed action will meet these conditions, the proponent must ensure that the administrative record reflects consideration of these conditions. Certain categorical exclusions require documentation of the consideration of these conditions in the form of a Record of Consideration.

A. **Clearly Fits the Category.** The entire action clearly fits within one or more of the categories of excludable actions listed in Section 4.3 and/or in individual element's categorical exclusions. An element should not use a CE for an action with significant impacts whether they are beneficial or adverse.

B. **Is Not A Small Piece of a Larger Action.** The scope of the action has not been segmented. Segmentation can occur when an action or connected actions are broken into smaller

parts in order to avoid the appearance of significance of the total action and thus reduce the level of NEPA review required. For purposes of NEPA, actions must be considered in the same review if the actions are connected and interdependent, such as: where one action triggers or forces another; where one action depends on another; or where actions have the potential for effects that would be cumulative.

C. No Extraordinary Circumstances Exist. No extraordinary circumstances with potentially significant impacts relating to the proposed action exist. Extraordinary circumstances are unique conditions that are associated with the potential for significant impacts. Specific actions that might otherwise be categorically excluded, but are associated with one or more extraordinary circumstances, should be carefully evaluated to determine whether a CE is appropriate. A determination of whether an action that is normally excluded requires additional analysis must focus on the action's potential effects and the environmental significance in context (whether local, state, regional, tribal, national, or international) and in intensity. This determination is made by considering whether the action is likely to involve one or more of the following circumstances:

- (1) A potentially significant effect on public health or safety.
- (2) A potentially significant effect on species or habitats protected by the Endangered Species Act, Marine Mammal Protection Act, or Magnuson-Stevens Fishery Conservation and Management Act.
- (3) A potentially significant effect on a district, site, highway, structure, or object that is listed in or eligible for listing in the National Register of Historic Places, affects a historic or cultural resource or traditional and sacred sites, or the loss or destruction of a significant scientific, cultural, or historical resource.
- (4) A potentially significant effect on a unique characteristic of the geographic area, such as park land, prime farmland, wetland, floodplain, coastal zone, or a wild and scenic river, sole or principal drinking water aquifers, or an ecologically critical area.
- (5) A potential or threatened violation of a federal, state, or local law or administrative determination imposed for the protection of the environment. Some examples of administrative determinations to consider are a local noise control ordinance; the requirement to conform to an applicable State Implementation Plan (SIP); and federal, state, or local requirements for the control of hazardous or toxic substances.
- (6) An effect on the quality of the human environment that is likely to be highly controversial in terms of scientific validity, likely to be highly uncertain, likely to involve unique or unknown environmental risks.

(7) Employment of new technology or unproven technology that is likely to involve unique or unknown environmental risks, where the effect on the human environment is likely to be highly uncertain, or where the effect on the human environment is likely to be highly controversial in terms of scientific validity.

(8) A precedent is set that forecloses future options that have significant effects.

(9) Significantly greater scope or size than normally experienced for a particular category of action.

(10) Potential for significant degradation of already existing poor environmental conditions. Also, initiation of a potentially significant environmental degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

3.3 List of Categorically Excludable Actions

A. Table 1 is a list of Categorical Exclusions, those activities which normally require no further NEPA analysis. Proponents, in consultation with their EPC, should be alert for the presence of those extraordinary circumstances listed in section 3.2 of this attachment. These categorical exclusions were developed on the basis of an administrative record from the elements that comprise the new department, from professional staff and expert opinion, and/or past NEPA analyses. The DHS CEs are divided into the following functional groupings of activities conducted by the DHS elements in fulfilling the Department mission:

- (1) Administrative and Regulatory Activities
- (2) Operational Activities
- (3) Real Estate Activities
- (4) Repair and Maintenance Activities
- (5) Construction, Installation, and Demolition Activities
- (6) Hazardous/Radioactive Materials Management and Operations
- (7) Training and Exercises
- (8) Categorical Exclusions for specific DHS elements

B. Activities that involve greater potential for environmental effect require a Record of Environmental Consideration (REC) to justify the use of the CE. These activities are marked

with an asterisk. A REC is a means of documenting whether the conditions listed in 3.2 A, B, and C are met. The DOSE will sign all RECs unless signature authority has been delegated to the element. The REC will normally not exceed two pages.

Table 1: Categorical Exclusions

CE#	ADMINISTRATIVE AND REGULATORY ACTIVITIES. These categorical exclusions have the additional requirement to be conducted in conformance with the Greening the Government Executive Orders (e.g., EO 13101, 13123, 13148, 13149, and 13150).
A1	Personnel, fiscal, management, and administrative activities, such as recruiting, processing, paying, recordkeeping, resource management, budgeting, personnel actions, and travel.
A2	Reductions, realignments, or relocation of personnel that do not result in exceeding the infrastructure capacity or change the use of space. An example of a substantial change in use of the supporting infrastructure would be an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase.
A3	<p>Promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents of the following nature:</p> <ul style="list-style-type: none"> (a) Those of a strictly administrative or procedural nature; (b) Those that implement, without substantive change, statutory or regulatory requirements; (c) Those that implement, without substantive change, procedures, manuals, and other guidance documents; (d) Those that interpret or amend an existing regulation without changing its environmental effect; (e) Technical guidance on safety and security matters; or (f) Guidance for the preparation of security plans.
A4	<p>Information gathering, data analysis and processing, information dissemination, review, interpretation, and development of documents, that involves no commitment of resources or recommendations for future commitments of resources other than the associated manpower and funding. Examples include but are not limited to:</p> <ul style="list-style-type: none"> (a) Document mailings, publication and distribution, and training and information programs, historical and cultural demonstrations, and public affairs actions (b) Studies, reports, proposals, analyses, literature reviews; computer modeling; and other non-intrusive intelligence gathering activities
A5	Contingency planning and administrative activities in anticipation of emergency and disaster response and recovery. Examples include response plans, protocols for use of suppressants, etc.

A6	Awarding of contracts for technical support services, ongoing management and operation of government facilities, and professional services that do not involve unresolved conflicts concerning alternative uses of available resources.
A7	Procurement of non-hazardous goods and services, and storage, recycling, and disposal of non-hazardous materials and wastes, that complies with applicable requirements and that is in support of routine administrative, operational, maintenance activities. Storage activities must occur on previously disturbed land or in existing facilities. Examples include but are not limited to: <ul style="list-style-type: none"> (a) Office supplies (b) Equipment (c) Mobile assets (d) Utility services (e) Chemicals and low level radio nuclides for analytical testing and research (f) Deployable emergency response supplies and equipment (g) Waste disposal and contracts for waste disposal in permitted landfills or other authorized facilities.
A8	The commitment of resources, personnel, and funding to conduct audits, surveys, and data collection of a minimally intrusive nature. Examples include, but are not limited to: <ul style="list-style-type: none"> (a) Activities designed to support the improvement or upgrade management of natural resources, such as surveys for threatened and endangered species, wildlife and wildlife habitat, historic properties, and archeological sites; wetland delineations; timber stand examination; minimal water, air, waste, material and soil sampling; audits, photography, and interpretation (b) Minimally-intrusive geological, geophysical, and geo-technical activities, including mapping and engineering surveys (c) Site characterization studies and environmental monitoring, including siting, construction, operation, and dismantling or closing of characterization and monitoring devices, Facility Audits, Environmental Site Assessments, and Environmental Baseline Surveys (d) Vulnerability, risk, and structural integrity assessments of infrastructure.
CE#	OPERATIONAL ACTIVITIES
B1	Research, development, testing, and evaluation activities, or laboratory operations conducted within existing enclosed facilities consistent with previously established safety levels and in compliance with federal, tribal, state, and local requirements to protect the environment when it will result in no, or de minimus change in the use of the facility. If the operation will substantially increase the extent of potential environmental impacts or is controversial, an EA (and possibly an EIS) is required.
B2	Transportation of personnel, detainees, equipment, and evidentiary materials in wheeled vehicles over existing roads or established jeep trails, including access to permanent and temporary observation posts.

B3	Proposed activities and operations to be conducted in an existing structure that would be compatible with and similar in scope to its ongoing functional uses and would be consistent with previously established safety levels and in compliance with federal, tribal, state, and local requirements to protect the environment.
B4	<p>Provision of on-site technical assistance to non-DHS organizations to prepare plans, studies, or evaluations or to conduct training at sites currently used for such activities, Examples include, but are not limited to:</p> <ul style="list-style-type: none"> (a) General technical assistance to assist with development and enhancement of Weapons of Mass Destruction (WMD) response plans, exercise scenario development and evaluation, facilitation of working groups, etc. (b) State strategy technical assistance to assist states in completing needs and threat assessments and in developing their domestic preparedness strategy (c) Training on use, maintenance, calibration, and/or refurbishing of specialized equipment
B5	<p>Support for community participation projects. Examples include, but are not limited to:</p> <ul style="list-style-type: none"> (a) Earth Day activities (b) Adopting schools (c) Cleanup of rivers and parkways (d) Repair and alteration of housing
B6	<p>Approval of recreational or public activities or events at a location typically used for that type and scope (size and intensity) of that activity. Examples include, but are not limited to:</p> <ul style="list-style-type: none"> (a) Picnics (b) Encampments (c) Interpretive programs for historic and cultural resources, such as programs in conjunction with State and Tribal Historic Preservation Officers, or with local historic preservation or re-enactment groups.
B7	Realignment or initial home porting of mobile assets, including vehicles, vessels and aircraft, to existing operational facilities that have the capacity to accommodate such assets or where supporting infrastructure changes will be minor in nature to perform as new homeports or for repair and overhaul.

B8*	<p>Acquisition, installation, maintenance, operation, evaluation, removal, or disposal of security equipment to screen for or detect dangerous or illegal individuals or materials at existing facilities. Examples include, but are not limited to:</p> <ul style="list-style-type: none"> (a) Low-level x-ray devices (b) Cameras and biometric devices (c) Passive inspection devices (d) Detection or security systems for explosive, biological, or chemical substances. (e) Access controls, screening devices, and traffic management systems
B9*	<p>Acquisition, installation, maintenance, operation, evaluation, removal, or disposal of target hardening security equipment, devices, or controls to enhance the physical security of existing critical assets to include, but not limited to:</p> <ul style="list-style-type: none"> (a) Motion detection systems (b) Temporary use of barriers, fences, and jersey walls on or adjacent to existing facilities (c) Impact resistant doors and gates (d) X-ray units (e) Remote video surveillance systems (f) Diver/swimmer detection systems except sonar (g) Blast/shock impact-resistant systems (h) Column and surface wraps (i) Breakage/shatter-resistant glass
B10	<p>Existing aircraft operations conducted in accordance with normal flight patterns and elevations. This categorical exclusion encompasses the actions of many component elements of the DHS during training and emergency response and recovery efforts, but would primarily be used by the elements of Coast Guard and Border and Transportation Security in their daily activities.</p>
B11	<p>Identifications, inspections, surveys, or sampling, testing, seizures, quarantines, removals, sanitization, and monitoring of imported products and that cause little or no physical alteration of the environment. This categorical exclusion would primarily encompass a variety of daily activities performed at the borders and ports of entry by various elements of the Border and Transportation Security Directorate.</p>
B12	<p>Routine monitoring and surveillance activities that support law enforcement or homeland security and defense operations, such as patrols, investigations, and intelligence gathering, but not including any construction activities except those set forth in subsection F of these categorical exclusions. This categorical exclusion would primarily encompass a variety of daily activities performed by the elements of Coast Guard, Border and Transportation Security, and the Secret Service.</p>

B13*	<p>Harvest of live trees on DHS facilities not to exceed 70 acres, requiring no more than 1/2 mile of temporary road construction. Do not use this category for even-aged regeneration harvest or vegetation type conversion. The proposed action may include incidental removal of trees for landings, skid trails, and road clearing. Examples include but are not limited to:</p> <ul style="list-style-type: none"> (a) Removal of individual trees for saw logs, specialty products, or fuel wood. (b) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor. <p>This categorical exclusion would encompass property management activities at larger properties within the Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.</p>
B14*	<p>Salvage of dead and/or dying trees on DHS facilities not to exceed 250 acres, requiring no more than 1/2 mile of temporary road construction. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include but are not limited to:</p> <ul style="list-style-type: none"> (a) Harvest of a portion of a stand damaged by a wind or ice event and construction of a short temporary road to access the damaged trees. (b) Harvest of fire damaged trees. (c) Harvest of insect or disease damaged trees <p>This categorical exclusion would encompass property management activities at larger properties within the Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers</p>
CE#	REAL ESTATE ACTIVITIES
C1	Acquisition of an interest in real property that is not within or adjacent to environmentally sensitive areas, including interests less than a fee simple, by purchase, lease, assignment, easement, condemnation, or donation, which does not result in a change in the functional use of the property.
C2	Lease extensions, renewals, or succeeding leases where there is no change in the facility's use and all environmental operating permits have been acquired and are current.
C3	Reassignment of real property, including related personal property within the DHS (e.g., from one DHS element or activity to another) which does not result in a change in the functional use of the property.
C4	Transfer of administrative control over real property, including related personal property, between a non-DHS federal agency and the DHS which does not result in a change in the functional use of the property.

C5	Determination that real property is excess to the needs of the DHS and, in the case of acquired real property, the subsequent reporting of such determination to the General Services Administration or, in the case of lands withdrawn or otherwise reserved from the public domain, the subsequent filing of a notice of intent to relinquish with the Bureau of Land Management, Department of Interior.
CE#	REPAIR AND MAINTENANCE ACTIVITIES
D1	Minor renovations and additions to buildings, roads, airfields, grounds, equipment, and other facilities that do not result in a change in the functional use of the real property (e.g. realigning interior spaces of an existing building, extending an existing roadway in a developed area a short distance, adding a small storage shed to an existing building, or retrofitting for energy conservation. This could also include installing a small antenna on an already existing antenna tower that does not cause the total height to exceed 200 feet and where the FCC would not require an environmental assessment or environmental impact statement of the installation).
D2	Routine upgrade, repair, maintenance, or replacement of equipment and vehicles, such as aircraft, vessels, or airfield equipment which does not result in a change in the functional use of the property.
D3	Repair and maintenance of buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a change in functional use or an impact on a historically significant element or setting (e.g. replacing a roof, painting a building, resurfacing a road or runway, pest control activities, restoration of trails and firebreaks, culvert maintenance, grounds maintenance, existing security systems, waterfront facilities that do not require individual regulatory permits, and other facilities).
D4*	Reconstruction and/or repair by replacement of existing utilities or surveillance systems in an existing right-of-way or easement, upon agreement with the owner of the relevant property interest.
D5*	Maintenance dredging and repair activities within waterways, floodplains, and wetlands where no new depths are required, applicable permits are secured, and associated debris disposal will be at an approved disposal site. This categorical exclusion encompasses activities required for the maintenance of waterfront facilities managed primarily within the Coast Guard and Customs and Border Protection.

D6	<p>Maintenance of aquatic and riparian habitat in streams and ponds, using native materials or best natural resource management practices. Examples include, but are not limited to:</p> <ul style="list-style-type: none"> (a) Installing or repairing gabions with stone from a nearby source (b) Adding brush for fish habitat (c) Stabilizing stream banks through bioengineering techniques (d) Removing and controlling exotic vegetation, not including the use of herbicides or non-native biological controls. <p>This categorical exclusion would encompass property management activities at larger properties within the Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.</p>
CE#	CONSTRUCTION, INSTALLATION, AND DEMOLITION ACTIVITIES
E1	<p>Construction, operation, maintenance, and removal of utility and communication systems, mobile antennas, data processing cable, intrusion detection systems, and similar electronic equipment that use existing rights-of-way, easements, utility distribution systems, and/or facilities and for equipment and towers not higher than 200 feet where the FCC would not require an environmental assessment or environmental impact statement for the acquisition, installation, operation or maintenance.</p>
E2*	<p>New construction upon or improvement of land where all of the following conditions are met:</p> <ul style="list-style-type: none"> (a) The structure and proposed use are compatible with applicable local planning and zoning standards (b) The site is in a developed area and/or a previously disturbed site (c) The proposed use will not substantially increase the number of motor vehicles at the facility or in the area. (d) The site and scale of construction or improvement are consistent with those of existing, adjacent, or nearby buildings (e) The construction or improvement will not result in uses that exceed existing support infrastructure capacities (roads, sewer, water, parking, etc.)

E3*	<p>Acquisition, installation, operation, and maintenance of equipment, devices, and/or controls necessary to mitigate effects of the DHS missions on health and the environment, including the execution of appropriate real estate agreements. Examples include but are not limited to:</p> <ul style="list-style-type: none"> (a) Pollution prevention and pollution control equipment required to meet federal, tribal, state, or local requirements (b) Noise abatement measures, including construction of noise barriers, installation of noise control materials, or planting native trees and/or native vegetation for use as a noise abatement measure (c) Devices to protect human or animal life, such as raptor electrocution prevention devices, fencing to restrict wildlife movement on to airfields, fencing and grating to prevent accidental entry to hazardous or restricted areas, and rescue beacons to protect human life.
E4*	Removal or demolition, along with subsequent disposal of debris to permitted or authorized off-site locations, of non-historic buildings, structures, other improvements, and/or equipment in compliance with applicable environmental and safety requirements.
E5	Natural resource management activities to enhance native flora and fauna, including site preparation and landscaping. This categorical exclusion would encompass property management activities primarily at properties within the Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.
E6	Construction or reconstruction of roads on previously disturbed areas on DHS facilities, where runoff, erosion, and sedimentation issues are mitigated through implementation of Best Management Practices. This categorical exclusion would encompass property management activities primarily at properties within the Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.
E7	Construction of exercise and training trails for non-motorized use in areas that are not environmentally sensitive and that are located on DHS facilities, where run-off, erosion, and sedimentation are mitigated through implementation of Best Management Practices. This categorical exclusion would encompass property management activities primarily at properties within the Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.

E8*	<p>Construction of aquatic and riparian habitat in streams and ponds, using native materials or best natural resource management practices. Examples include, but are not limited to:</p> <ul style="list-style-type: none"> (a) Installing or repairing gabions with stone from a nearby source (b) Adding brush for fish habitat (c) Stabilizing stream banks through bioengineering techniques (d) Removing and controlling exotic vegetation, not including the use of herbicides or non-native biological controls. This categorical exclusion would encompass property management activities primarily at properties within the Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.
E9*	<p>Except in environmentally sensitive areas, construction, operation, modification, or closure of:</p> <ul style="list-style-type: none"> (a) Wells for drinking water, sampling, and watering landscaping at DHS facilities (b) Septic systems in accordance with State and local environmental and health requirements (c) Field instruments, such as stream-gauging stations, flow-measuring devices, telemetry systems, geo-technical monitoring tools, geophysical exploration tools, water-level recording devices, well logging systems, water sampling systems, ambient air monitoring equipment <p>This categorical exclusion would encompass property management activities primarily at properties within the Coast Guard, Science and Technology Directorate, and the Border and Transportation Security Directorate.</p>
CE#	HAZARDOUS/RADIOACTIVE MATERIALS MANAGEMENT AND OPERATIONS
F1	<p>Routine procurement, handling, recycling, and off-site disposal of hazardous material/waste that complies with applicable requirements. Examples include but are not limited to:</p> <ul style="list-style-type: none"> (a) Process-related chemicals and metals used in repair, maintenance, alteration, and manufacturing (b) Routine transportation, distribution, use, storage, treatment, and disposal of solid waste, medical waste, radiological and special hazards conducted in accordance with all federal, state, local and tribal laws and regulations. (c) Hazardous waste minimization and recycling activities.
F2	<p>Use of instruments that contain hazardous, radioactive, and radiological materials. Examples include, but are not limited to:</p> <ul style="list-style-type: none"> (a) Gauging devices, tracers, analytical instruments, and other devices containing sealed radiological and radioactive sources (b) Industrial radiography (c) Devices used in medical and veterinary practices (d) Installation, maintenance, non-destructive tests, and calibration

F3	Use, transportation, and placement of Nuclear Regulatory Commission (NRC) approved, sealed, small source radiation devices for scanning vehicles and packages where radiation exposure to employees or the public does not exceed 0.1 rem per year and where systems are maintained within the NRC license parameters at existing facilities. This categorical exclusion would primarily encompass a variety of daily activities performed by the elements of Coast Guard, Border and Transportation Security, and the Secret Service.
CE#	TRAINING AND EXERCISES
G1	<p>Training of homeland security personnel, including international, tribal, state, and local agency representatives using existing facilities where the training occurs in accordance with applicable permits and other requirements for the protection of the environment. This exclusion does not apply to training that involves the use of live chemical, biological, or radiological agents except when conducted at a location designed and constructed for that training. Examples include but are not limited to:</p> <ul style="list-style-type: none"> (a) Administrative or classroom training (b) Tactical training, including but not limited to training in explosives and incendiary devices, arson investigation and firefighting, and emergency preparedness and response (c) Vehicle and small boat operation training (d) Small arms and less-than-lethal weapons training (e) Security specialties and terrorist response training (f) Crowd control training, including gas range training (g) Enforcement response, self-defense, and interdiction techniques training (h) Techniques for use in fingerprinting and drug analysis
G2	Projects, grants, cooperative agreements, contracts, or activities to design, develop, and conduct national, state, local, or international exercises to test the readiness of the nation to prevent or respond to a terrorist attack of natural or manmade disasters and where in accordance with existing facility or land use designations. This exclusion does not apply to exercises that involve the use of chemical, biological, radiological, nuclear, or explosive agents/devices (other than small devices such as practice grenades/flash bang devices used to simulate an attack during exercise play).
CE#	UNIQUE CATEGORICAL EXCLUSIONS FOR THE TRANSPORTATION AND SECURITY ADMINISTRATION
H1	Approval or disapproval of security plans required under legislative or regulatory mandates unless such plans would have a significant effect on the environment.
H2	Issuance of grants for the conduct of security-related research and development or the implementation of security plans or other measures at existing facilities.

H3	Issuance of planning documents and advisory circulars on planning for security measures which are not intended for direct implementation or are issued as administrative and technical guidance.
H4	Issuance or revocation of certificates or other approvals, including but not limited to: (a) Airmen certificates (b) Security procedures at general aviation airports (c) Airport security plans
CE#	UNIQUE CATEGORICAL EXCLUSION FOR THE U.S. VISIT PROGRAM
I1*	A portable or relocatable facility or structure used to collect traveler data at or adjacent to an existing port of entry that does not significantly disturb land, air, or water resources and does not individually or cumulatively have a significant environmental effect. The building footprint of the facility must be less than 5000 square feet and the facility or structure must not foreclose future land use alternatives.
CE#	UNIQUE CATEGORICAL EXCLUSION FOR THE FEDERAL LAW ENFORCEMENT TRAINING CENTER
J7*	Prescribed burning, wildlife habitat improvement thinning, and brush removal for southern yellow pine at the FLETC facility in Glynco, Georgia. No more than 200 acres will be treated in any single year. These activities may include up to 0.5 mile of low-standard, temporary road construction to support these operations.
CE#	UNIQUE CATEGORICAL EXCLUSIONS FOR THE CUSTOMS AND BORDER PATROL
K1	Road dragging of existing roads and trails to maintain a clearly delineated right-of-way and to provide evidence of foot traffic and that will not expand the width, length, or footprint of the road or trail.
K2	Repair and maintenance of existing border fences that do not involve expansion in width or length of the project, and will not encroach on adjacent habitat.

4.0 Environmental Assessments

This Chapter provides supplementary instructions for implementing environmental assessments (EA).

An EA is a brief analysis that is prepared pursuant to NEPA to assist the proponent in decision making. An EA concludes in either a finding of no significant impact or a Notice of Intent to prepare an environmental impact statement. The EA should include alternatives to the proposed action. EAs and the associated environmental documents should be reviewed and approved by the CAS, unless signature authority has been specifically delegated to the DHS element.

Based upon the analysis and selection of mitigation measures that reduce environmental impacts until they are no longer significant, an EA may result in a FONSI. If a proponent uses mitigation measures in such a manner, the FONSI must identify these mitigating measures, and they become legally binding and must be accomplished as the project is implemented. If any of these identified mitigation measures do not occur, so that significant adverse environmental effects could reasonably be expected to result, the proponent must stop the action and prepare an EIS.

It is the DHS policy to involve the public to the extent practicable. The proponent should consider the practicality of making the EA available for public review and comment before completing the FONSI. The proponent, working in consultation with the EPC, will determine the practicality based on consideration of the factors in section 2.6, Public Involvement. When practical, an EA will be made available for public review and comment for a period of 30 days before completing the FONSI.

4.1 When to Use

- A. For any action proposed by an element that does not qualify for a categorical exclusion or does not clearly require an EIS, the element will prepare and circulate an EA.
- B. If changes in the scope of a proposed element action could significantly affect the quality of the human environment, an EA shall be prepared as soon as possible to determine the significance of the effects unless it is otherwise clear that an EIS is needed.
- C. An EA should be prepared for proposed actions that would normally be categorically excluded except that the proposed action involves extraordinary circumstances that may result in the proposed action having potential for a significant impact on the human environment.

D. An EA need not be prepared if an element has decided to prepare an EIS on a proposed action.

4.2 Actions Normally Requiring an EA or a Programmatic EA (1501.3, 1508.9)

A. Projects for which environmental assessments will be the minimum level of analysis include, but are not limited to:

(1) Proposed construction, land use, activity, or operation that has the potential to significantly affect environmentally sensitive areas.

(2) Dredging projects that do not meet the criteria of the U.S. Army Corps of Engineers Nationwide Permit Program.

(3) New or revised regulations, directives, or policy guidance that is not categorically excluded.

(4) Proposal of new, low-altitude aircraft routes wherein over flights have the potential to significantly affect persons, endangered species, or property.

(5) Permanent closure or limitation of access to any areas that were previously open to public use (e.g., roads and recreational areas) where there is a potential for significant environmental impacts.

(6) New law enforcement field operations for which the impacts are unknown, or for which the potential for significant environmental degradation or controversy is likely.

B. A Programmatic EA may be prepared on a broad federal action, such as a program or plan, for which only very general environmental information is known, yet for which the anticipated environmental impacts are minor. A site or activity-specific EA or supplemental EA, may then be tiered to the PEA and the environmental analysis discussed in the broader statement be incorporated by reference in the site-specific EA. In some cases the programmatic assessment may be specific enough or contain sufficient information to require no or very little tiered analysis.

4.3 Decision Document: Finding of No Significant Impact (FONSI) (1508.13)

If the EA supports the conclusion that the action has no significant impact on the environment, the element will prepare a separate Finding of No Significant Impact (FONSI) that will accompany the EA.

A. The FONSI must either be attached to the EA or incorporate the EA by reference and consist of the following:

- (1) The name of the proposed action.
- (2) The facts and conclusions that led to the FONSI.
- (3) Any mitigation commitments (including funding and/or monitoring) essential to render the impacts of the proposed action not significant, beyond those mitigations that are an integral part of the proposed action.
- (4) A statement that the action will not have a significant impact on the human environment.
- (5) The date of issuance and signature of the element official approving the document.

B. The proponent, in consultation with the EPC, will determine whether to make the FONSI available to the public for a reasonable period of time before making a decision or taking action. A reasonable period of time will be determined on the basis of an evaluation of the criteria in CEQ regulations at 40 CFR 1501.4(e) and an evaluation of the comments received during the EA review and comment period.

4.4 Supplemental EAs

A. The Proponent will prepare a supplemental EA if there are substantial changes to the proposal that are relevant to environmental concerns or significant new circumstances or information relevant to environmental concerns.

B. The Proponent may supplement a draft or final EA at any time to further the analysis. The proponent shall introduce any such supplement into its formal administrative record if such a record exists.

C. The Proponent will prepare, circulate, and file a supplement to an EA in the same manner as any other EA. A FONSI is required for the supplement prior to any decision making.

D. While the Proponent is encouraged to provide public involvement in Supplemental EAs, the proponent has discretion regarding the type and level of public involvement in Supplemental EAs. Factors to be weighed include those listed in Section 2.6 A.

5.0 Environmental Impact Statements (EISs)

This Chapter provides supplementary instructions for implementing environmental impact statements (EIS). An EIS analyzes the environmental impacts of a proposed action and all reasonable alternatives. It displays them in a report for review by the decision maker. The EIS provides an opportunity to work collaboratively with other federal, state, and tribal authorities. The EIS provides an opportunity for the public to understand the impacts and to influence the decision. An EIS is a more detailed analysis than an EA and is prepared for actions that appear to be major federal actions significantly affecting the quality of the human environment. It includes (1) a purpose and need statement (2) a reasonable range of alternative means to meet that purpose and need (3) a description of the affected environment and (4) a description of the environmental effects of each of the alternatives. The EIS must identify the element preferred alternative (if there is one) in the draft EIS.

5.1 When to Use

An EIS is prepared when a DHS element proposes an action that does not qualify for a categorical exclusion or EA, and that could constitute a major federal action significantly affecting the quality of the human environment.

5.2 Actions Normally Requiring an EIS (1501.4), a Programmatic EIS, or a Legislative EIS (1506.8)

A. Actions normally requiring EISs include, but are not limited to:

- (1) Actions where the effects of a project or operation on the human environment are likely to be highly controversial.
- (2) Proposed major construction or construction of facilities that would have a significant effect on wetlands, coastal zones, or other environmentally sensitive areas.
- (3) Major federal actions having a significant environmental effect on the global commons, such as the oceans or Antarctica, as described in section 2-3 of EO 12114.
- (4) Change in area, scope, type, and/or tempo of operations that may result in significant environmental effects.
- (5) Where an action is required by statute or treaty to develop an EIS.

B. A Programmatic EIS may be prepared on a broad federal action, such as a program or plan, for which only very general environmental information is known. A site-specific EIS or

EA may then be tiered to the PEIS and the environmental analysis discussed in the broader statement be incorporated by reference in the site-specific analysis.

C. A Legislative EIS will be prepared and circulated for any legislative proposal, for which the DHS or its elements are primarily responsible and which involve significant environmental impacts.

5.3 Preparation and Filing (1506.9)

The proponent is responsible for initiation, preparation, and approval of EISs. This official has overall responsibility for formulating, reviewing, or proposing an action or, alternatively, has been delegated the authority or responsibility to develop, approve, or adopt a proposal or action. Preparation at this level will ensure that the NEPA process will be incorporated into the planning process and that the EIS will accompany the proposal through existing review processes.

5.4 Combining Documents (1506.4)

Draft and Final EISs should refer to the underlying studies, reports, and other documents considered in conjunction with the preparation. The element should indicate how such documents could be obtained. If possible, the supporting documents should be posted on a DHS web site along with the EIS. With the exception of standard reference documents, such as congressional materials, the proponent should maintain a file of the respective documents, which may be consulted by interested persons. If especially significant documents are attached to the EIS, care should be taken to ensure that the statement remains an essentially self-contained instrument easily understood without the need for undue cross-reference.

5.5 Supplemental EISs (1502.9)

A. The proponent will prepare a supplemental EIS if there are substantial changes to the proposal that are relevant to environmental concerns or significant new circumstances or information relevant to environmental concerns as discussed in 40 CFR 1502.9(c)(1). In those cases where an action is not completed within a budget cycle (typically 2 years) from the execution of the ROD, the proponent will review the EIS when proceeding with the action to determine whether a supplement is needed.

B. The proponent may supplement a draft or final EIS or ROD at any time to further the analysis. The proponent shall introduce any such supplement into its formal administrative record if such a record exists.

C. Any element decision to prepare a supplemental EIS will be coordinated with the DEE unless such decision has been delegated to the respective EPC.

D. The proponent will prepare, circulate, and file a supplement to a draft or final EIS in the same manner as any other draft or final EIS, except that scoping is optional for a SEIS. A separate ROD is required for the supplement prior to any action being taken even if one had been prepared for the final EIS that is being supplemented. In special circumstances, it may be possible to negotiate alternative procedures for the SEIS with CEQ. The DEE will lead any discussions of alternative procedures with CEQ, unless delegated to the respective EPC.

E. The public notice methods should be chosen to reach persons who may be interested in or affected by the proposal, including actions with effects of primarily local concern, may include, but not be limited to, those listed in Attachment A, Section 2.6.B.

5.6 Proposals for Legislation (1506.8)

The proponent, in consultation with the DEE, is responsible for ensuring compliance with NEPA in legislative proposals. The DEE will maintain close coordination with the Office of the General Counsel whenever legislation is proposed that requires NEPA compliance.

5.7 Decision Document: Record of Decision (ROD) (1505.2)

If the element decides to take action on a proposal covered by an EIS, a ROD will be prepared. The element will publish the ROD in the appropriate manner to make it available to the public and to reach the range of interested parties involved. The element will also post the ROD on the element web site, if one exists.

5.8 Review of Other Agencies' EISs

A. If any DHS element receives a request for EIS comment directly from another agency, and the DHS element wants to provide comments on the EIS, the DHS element will notify the DOSE about the request. DOSE will check if other DHS elements have been requested to comment on the same EIS.

(1) If no other DHS elements have received a request for comment, DOSE will inform the requested element to provide comments it sees fit.

(2) If other DHS elements have received a request for comment, DOSE will either:

(a) Coordinate the response between the DHS elements, or

(b) Direct one of the DHS elements to serve as the lead commenting element.

B. Any pertinent DHS projects that are environmentally or functionally related to the action proposed in the EIS should be identified so that interrelationships can be discussed in the final

statement. In such cases, the DHS element should consider serving as a joint lead agency or cooperating agency.

C. Several types of EIS proposals from non-DHS agencies should be referred by the DHS element directly to DOSE for comment, including:

- (1) Actions with national policy implications relating to the DHS mission.
- (2) Actions with national security, immigration, or law enforcement implications.
- (3) Legislation, regulations, and program proposals having national impact on the DHS mission.
- (4) Actions that may affect the DHS mission.

D. Provide a copy of formal comments on non-DHS agency EISs to DOSE.

6.0 Special Circumstances

6.1 Emergencies (1506.11)

In addition to natural and technological hazards, Americans face threats posed by hostile governments and extremist groups. These threats to national security include acts of terrorism and war, and require DHS action to protect public health and safety and may not provide adequate time to prepare the appropriate NEPA analyses and documentation.

A. In the event of such an emergency, the DHS will not delay an emergency action necessary for national defense, security, or preservation of human life or property in order to comply with this Directive or the CEQ regulations. Examples of emergencies that may require immediate DHS action include response to the release or imminent release of hazardous, biological or radiological substances.

B. The DHS senior executive on site responding to the emergency will consider the probable environmental consequences of the proposed DHS actions and will minimize environmental damage to the maximum degree practical, consistent with protecting human life, property, and national security. At the earliest practical time, the DHS Senior Executive on site responding to the emergency shall consult with the DEE on the emergency and the DHS actions that may have environmental impacts.

C. If the DHS Senior Executive on site and the DEE jointly conclude that the DHS emergency response actions would qualify for a DHS or DHS element categorical exclusion and give rise to no extraordinary circumstances as defined in this Directive or the CEQ regulations,

then no further analysis or documentation is required to comply with NEPA prior to proceeding with the DHS actions.

D. For those cases when the DHS senior executive on site and the DEE jointly conclude that the DHS emergency response actions would not qualify for a categorical exclusion, the DEE will, at a minimum, document consideration of the potential environmental effects in an environmental assessment for the DHS response action. If the DEE concludes that no significant environmental effects will occur, a FONSI will be prepared and filed. In the event the EA cannot be concluded prior to the initiation of the DHS response actions, the DEE and DHS senior executive will develop alternative arrangements for the procedural requirements of other sections of this part and the CEQ regulations pertaining to environmental assessments that, to the maximum extent practical, ensure public notification and involvement and focus on minimizing the adverse environmental consequences of the DHS response action and the emergency. The DEE will inform CEQ of these arrangements at the earliest opportunity.

E. If, at any time, the DHS Senior Executive on site responding to the emergency or the DEE conclude that the emergency action appears to be a major federal action significantly affecting the quality of the human environment, the DEE will immediately notify the Council on Environmental Quality regarding the emergency and will seek alternative arrangements to comply with NEPA in accordance with 40 CFR section 1506.11.

F. The alternative arrangements developed under subsection D or E apply only to actions necessary to control the immediate effects of the emergency to prevent further harm to life or property. Other actions remain subject to NEPA review as set forth herein.

G. A public affairs plan should be developed to ensure open communication among the media, the public, and the DHS in the event of an emergency.

6.2 Classified or Protected Information (1507.3(c))

A. Notwithstanding other sections of this Chapter, the DHS will not disclose classified, protected, proprietary, or other information that is exempted from disclosure by the Freedom of Information Act (FOIA)(5 U.S.C. 552), critical infrastructure information as defined in 6 U.S.C. 131(3), sensitive security information as defined in 49 CFR Part 1520, E.O. 12958, the DHS Management Directive 0460.1, "Freedom of Information Act Compliance", and the DHS Management Directive 11042, "Safeguarding Sensitive But Unclassified (For Official Use Only) Information", or other laws, regulations, or Executive Orders prohibiting or limiting the release of information.

B. The existence of classified or protected information does not relieve the DHS of the requirement to assess and document the environmental effects of a proposed action.

C. To the fullest extent possible, the DHS will segregate any such classified or protected information into an appendix sent to appropriate reviewers and decision makers, and allow public review of the remainder of the NEPA analysis. If exempted material cannot be segregated, or if segregation would leave essentially meaningless material, the DHS elements will withhold the entire NEPA analysis from the public; however, the DHS elements will prepare the NEPA analysis in accordance with the CEQ Regulations and this Directive, and use it in the DHS decision making process. The protected NEPA analysis may be shared with appropriately cleared officials in CEQ, EPA, and within the DHS. In such cases, other appropriate security and environmental officials will ensure that the consideration of environmental effects will be consistent with the letter and intent of NEPA. With regard to an EIS requiring a security clearance for review, a team of cleared personnel will review the classified or protected material for compliance with federal, tribal, state, and local environmental compliance. This team will be representative of internal environmental professionals and external resource professionals with appropriate clearances.

6.3 Procedures for Applicants (1501.2, 1506.5)

A. The DHS elements with the role of processing applications for permits, grants, various certifications, awards, licenses, approvals, or other major federal actions become the project proponent for environmental planning purposes. These proponents must consider the environmental effects of their action in accordance with this Directive, unless the action is exempted by statute. The requirements of this management Directive may be approached in a programmatic manner (e.g. one NEPA evaluation and document for an entire category of grants) or may be approached on a single application basis. In either case, the DHS element must be alert to identify circumstances that may be associated with any single application that would have potential for significant environmental impacts.

B. For major categories of DHS actions involving a large number of applicants, the appropriate DHS element will prepare and make available generic guidance describing the recommended level and scope of environmental information that applicants should provide and identify studies or other information foreseeably required for later federal action.

C. The DHS proponent shall begin the NEPA review as soon as possible after receiving an application. The proponent must conduct an independent and objective evaluation of the applicant's materials and complete the NEPA process (including evaluation of any EA that may be prepared by the applicant) before rendering a decision on the application. The DHS proponents must consider the NEPA analysis in reaching a decision.

D. In all cases, the DHS program proponent shall ensure that its application submittal and approval process provides for appropriate time and resources to meet the requirements of this Directive. At a minimum, the application submittal and approval process must incorporate the following provisions. Each DHS program proponent must ensure, for each separate approval

authority, that the responsibility for meeting these provisions is appropriately allocated between the applicant and the DHS for each program of applications and, potentially, for each individual applicant.

(1) Consultation with the DHS proponent as early as possible in the application development process to obtain guidance with respect to the appropriate level and scope of any studies or environmental information that the program proponent may require to be submitted as part of the application. This includes the identification of the need for the DHS proponents to consult with federal, tribal, state, and local governments and with private entities and organizations potentially affected by or interested in the proposed action in accordance with 40 CFR 1501.2(d)(2).

(2) Anticipation of issues that may lead to either or both (1) a significant environmental impact; or (2) a concern with evaluating the level of significance. This may include identification of information gaps that may hinder an appropriate evaluation of significance.

(3) Performance of studies that the DHS proponent deems necessary and appropriate to determine the potential for environmental impacts of the proposed action.

(4) Identification and evaluation of appropriate options to resolve potentially significant environmental impacts. This may include development of appropriate actions to mitigate significant impacts.

(5) Consultation, as appropriate, with federal, tribal, state, and local governments and with private entities and organizations potentially affected by or interested in the proposed action as needed during the NEPA process for scoping and other public involvement activities. This would include consultation with minority populations and low-income populations in accordance with E.O. 12898.

(6) Notification to the DHS proponent as early as possible of other actions required to coordinate and complete the federal environmental review and to eliminate duplication with state and local procedures. (1506.2)

(7) Notification to the DHS proponent if the applicant changes the scope of the proposed action.

(8) Notification to the DHS proponent if the applicant plans to take an action that is within the proponent's jurisdiction that may have a significant environmental impact or limit the choice of alternatives. If the DHS proponent determines that the action would have a significant environmental impact or limit the choice of reasonable alternatives, the proponent will promptly

notify the applicant that the permit, license, etc. will be withheld until the objectives and procedures of NEPA are achieved.

(9) Completion of appropriate NEPA documentation.

E. Final DHS approval of a grant, license, permit or other formal request from an applicant may be conditioned by provisions for appropriate mitigation of potentially significant environmental impacts. The DHS proponents will ensure that all mitigation committed to as part of the ROD or FONSI is incorporated as conditions in whatever formal approval, contract, or legal document is issued. The DHS proponents will also ensure that appropriate monitoring of the implementation and success of the mitigation is also a condition of the formal documentation. The mitigation shall become a line item in the proponent's budget or other funding document, if appropriate, or included in the legal documents implementing the action (contracts, leases, or grants).

Appendix A: Definitions

Categorical exclusion (CE) (1508.4): “Categorical exclusion” means a category of actions which do not individually or cumulatively have a significant effect on the environment and which have been found to have no such effect in procedures adopted by a federal agency in implementation of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

Cooperating Agency (1508.5): "Cooperating agency" means any federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in Sec. 1501.6. A State or local agency of similar qualifications or an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

Council on Environmental Quality (CEQ): NEPA created in the Executive Office of the President a Council on Environmental Quality. The Chairman is appointed by the President with the advice and consent of the Senate. The Council, among other things, appraises programs and activities of the federal Government in the light of the policy set forth in title I of NEPA and formulates and recommends national policies to promote the improvement of the quality of the environment.

Designated DHS Official: Senior DHS officials as designated by the Secretary, Deputy Secretary, or Under Secretaries.

Effects (1508.8): “Effects” include: (a) Direct effects, which are caused by the action and occur at the same time and place. (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population, density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

Element: Any of the DHS organizational elements, including agencies, bureaus, services, directorates, etc.

Environmental assessment (EA) (1508.9): “Environmental Assessment”:

(a) means a concise public document for which a federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an element in compliance with the Act when no environmental impact is necessary

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by NEPA section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

Environmental documents (1508.10): “Environmental documents” the document specified in § 1508.9 (environmental assessment), § 1508.11 (environmental impact statement), § 1508.13 (finding of no significant impact), and § 1508.22 (notice of intent).

Environmental impact analysis: A generic term that includes EAs and EISs.

Environmental impact statement (EIS) (1508.11): "Environmental impact statement" means a detailed written statement as required by section 102(2)(C) of the Act. It includes (1) a purpose and need statement (2) a reasonable range of alternative means to meet that purpose and need (3) a description of the affected environment and (4) a description of the environmental effects of each of the alternatives. The EIS must identify the element preferred alternative (if there is one) in the draft EIS.

Finding of No significant Impact (FONSI) (1508.13): "Finding of no significant impact" means a document by a federal agency briefly presenting the reasons why an action, not otherwise excluded (Sec. 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (Sec. 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

Environmentally Sensitive Areas: These include, but are not limited to, (1) proposed federally listed, threatened, or endangered species or their designated critical habitats; (2) properties listed or eligible for listing on the National Register of Historic Places; (3) Areas having special designation or recognition such as prime or unique agricultural lands, coastal zones, designated

wilderness or wilderness study areas, wild and scenic rivers, 100 year floodplains, wetlands, sole source aquifers, National Wildlife Refuge, National Parks, etc.

Lead Agency (1508.16): "Lead agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

Major Federal Action (1508.18): "Major federal action" includes actions with effects that may be major and which are potentially subject to federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (Sec. 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as element action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised element rules, regulations, plans, policies, or procedures; and legislative proposals (Secs. 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of federal resources, upon which future element actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected element decisions allocating element resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

Mitigation (1508.20): "Mitigation includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

National Environmental Policy Act (NEPA): Public Law 91-190 declares a national policy which will encourage productive and enjoyable harmony between man and his environment; establishes a Council on Environmental Quality in the Executive Office of the President; and requires that every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement (EIS) by the responsible official.

Notice of Intent (NOI) (1508.22): “Notice of Intent” means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

- (a) Describe the proposed action and possible alternatives.
- (b) Describe the element's proposed scoping process including whether, when, and where any scoping meeting will be held.
- (c) State the name and address of a person within the element who can answer questions about the proposed action and the environmental impact statement.

Proponent: The identified project or program manager. Normally this person resides in the operational line of authority. The proponent has the immediate authority to decide a course of action or has the authority to recommend course of action, from among options, to the next higher organization level (e.g. district to region) for approval. The proponent must also be in a position with the authority to establish the total estimate of resource requirements for the proposed action or, in the execution phase, have the authority to direct the use of resources. While the proponent is not normally expected to personally execute and document the environmental planning process, he or she has the lead role and is responsible for initiating the effort and retains responsibility (with support from the EPC) for the content and quality of the process and documentation.

Proposal (1508.23): "Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (Sec. 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

Record of Environmental Consideration (REC): A REC is a means of documenting element consideration of an action to ensure that it clearly fits a category of excludable actions (section 4.3), that it is not a small part of a larger action (section 3.2B), and that no extraordinary circumstances exist (3.2C). A REC is an internal DHS document to accompany the determination that a proposed action can be categorically excluded.

Record of Decision (ROD) (1505.2): The record, which may be integrated into any other record prepared by the agency shall:

(a) state what the decision was,

(b) identify all alternatives considered by the element in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An element may discuss preferences among alternatives based on relevant factors including economic and technical considerations and element statutory missions. An element shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the element making its decision and state how those considerations entered into its decision.

(c) State whether all practical means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

Scoping: Scoping (**described at 40 C.F.R. § 1501.7**) shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (Sec. 1508.22) in the Federal Register except as provided in Sec. 1507.3(e).

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental

grounds), unless there is a limited exception under Sec. 1507.3(c). An agency may give notice in accordance with Sec. 1506.6.

(2) Determine the scope (Sec. 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (Sec. 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in Sec. 1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (Sec. 1502.7).

(2) Set time limits (Sec. 1501.8).

(3) Adopt procedures under Sec. 1507.3 to combine its environmental assessment process with its scoping process.

(4) Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

Scoping is used to define the scope of the environmental impact analysis and to identify institutional relationships in the process of the study.

The scope (described at 40 C.F.R. § 1508.25) consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (Secs. 1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

- (a) Actions (other than unconnected single actions) which may be:
1. Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:
 - (i) Automatically trigger other actions which may require environmental impact statements.
 - (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
 - (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.
 2. Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.
 3. Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.
- (b) Alternatives, which include:
4. No action alternative.
 5. Other reasonable courses of actions.
 6. Mitigation measures (not in the proposed action).
- (c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

Tiering (1508.28): “Tiering” refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basin-wide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

- (a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.
- (b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead element to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.